

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of

Telecommunications Services
Inside Wiring

Customer Premises Equipment

CS Docket No. 95-184

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MAR 18 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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**COMMENTS OF THE INDEPENDENT DATA COMMUNICATIONS
MANUFACTURERS ASSOCIATION**

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SUMMARY

IDCMA supports the Commission's tentative decision to extend its pro-competitive CPE policies to cable CPE. As recognized in the Notice, these policies have been enormously successful. The adoption of the Part 68 registration program and the subsequent unbundling of carrier-provided CPE spawned a flourishing CPE market. Due to vigorous competition, the price of CPE has fallen at a remarkable rate. At the same time, equipment vendors have introduced an increasing variety of innovative equipment and features.

Congress has recognized the need for similar competition in the cable CPE market. Accordingly, Section 304 of the Telecommunications Act of 1996 directs the Commission to unbundle all cable CPE. The Commission should use this proceeding to implement this directive. There is every reason to believe that doing so will yield cable subscribers the same benefits that have flowed to telephone customers from the unbundling of CPE. For years, cable operators have leveraged their market power to force cable subscribers to buy or lease operator-provided equipment. Applying the No-Bundling Rule to cable CPE, however, will prevent such conduct and give cable subscribers the freedom to choose the CPE that best meets their needs.

Moreover, unbundling cable CPE will open the market to independent manufacturers. The Commission has recognized that this "will give product developers and manufacturers, as well as cable systems operators, the ability and incentive to introduce new products and to respond to consumer demand." This, the Commission has concluded, will provide consumers with "greater access to technology with new features and functions."

The participation of independent manufacturers in the cable CPE market also will promote "intermodal" competition between network-based and equipment based solutions. Cable operators have no incentive to offer equipment that would reduce the demand for network-based services. Independent manufacturers, by contrast, have the incentive and the demonstrated ability to develop and bring to market innovative alternatives to network-based services.

Unbundling cable CPE also will make it more difficult for cable operators to use profits from their service offerings to cross-subsidize their cable CPE. As a consequence, all equipment vendors will be able to compete on an equal basis for the CPE purchases of cable subscribers. In addition, unbundling cable CPE will serve U.S. trade policy by setting a pro-competitive example for our trading partners.

In order to ensure that cable subscribers can benefit from the wide selection of equipment available in a competitive CPE market, the Commission should affirm that cable subscribers have the right to connect cable CPE to the cable operators' networks on a nondiscriminatory basis. The Commission also should extend its Part 68 registration program to cable CPE. Doing so will allay any concerns held by cable operators that the interconnection of non-operator provided equipment will harm the network as well as assure independent manufacturers that their registered equipment can interconnect to the cable networks.

Finally, the Commission should require cable operators to disclose network information within a reasonable period for existing services and at least twelve months before introducing a new or modified network service that affects the interoperability of cable CPE. Such disclosure will ensure that independent manufacturers have the opportunity to develop competitive products.

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The Independent Data Communications Manufacturers Association ("IDCMA" or "the Association"), by its attorneys, hereby responds to that portion of the Commission's Notice of Proposed Rulemaking requesting comment on whether to extend the rules governing customer premises equipment ("CPE") to cable CPE.¹ Based on its experience in the CPE market, IDCMA is convinced that applying the Commission's pro-competitive policies to cable CPE will provide substantial benefits to cable subscribers.

¹ See Telecommunications Services Inside Wiring Customer Premises Equipment, Notice of Proposed Rulemaking, FCC 95-504, CS Docket No. 95-184 (rel. Jan. 26, 1996) ("Notice"). As used in these comments, the term "CPE" refers to customer premises equipment used in connection with carrier-provided telecommunications services. The term "cable CPE" refers to customer premises equipment used in conjunction with services provided over cable systems.

INTRODUCTION

IDCMA is an association of data communications companies that are not affiliated with communications common carriers or cable companies. IDCMA's member companies manufacture a wide array of telecommunications equipment, including modems, multiplexers, data service units, channel service units, network managements systems, internetworking equipment, and other devices used in data communications. As an association that was founded in 1971 to protect the ability of end-users to connect competitively provided equipment to the common carriers' networks, IDCMA is well-positioned to comment on the important equipment-related issues raised in the Notice.

In the Notice, the Commission tentatively concludes that consumers "should be able to connect cable-related equipment, as well as purchase this equipment" in the same manner that they can purchase and connect other CPE.² IDCMA supports the Commission's tentative decision to extend its pro-competitive CPE policies to the cable environment. As recognized in the Notice, these policies have been enormously successful.³ The adoption of the Part 68 registration program and the subsequent unbundling of carrier-provided CPE spawned a flourishing CPE market. Due to vigorous competition, the price of CPE has fallen at a remarkable rate. At the same time, equipment vendors have introduced an increasing variety of innovative equipment and features that were not available prior to the unbundling and detariffing of carrier-provided CPE.

² Id. at ¶ 72.

³ See id. at ¶ 70.

Congress has recognized the need for similar competition in the cable CPE market. Accordingly, Section 304 of the Telecommunications Act of 1996 directs the Commission to adopt regulations to promote the competitive availability of cable CPE. The Commission should use this proceeding to implement this congressional directive. There is every reason to believe that doing so will yield cable subscribers the same benefits that have flowed to telephone customers from competition in the CPE market. Indeed, the Commission already has observed that opening the market for cable CPE to independent equipment manufacturers, "will give product developers and manufacturers, as well as cable systems operators, the ability and incentive to introduce new products and to respond to consumer demand."⁴ This, the Commission has concluded, will provide consumers with "greater access to technology with new features and functions."⁵

In charting a competitive course for the cable CPE market, the Commission should be guided by the same basic principles that have worked so well in the CPE market. More specifically:

⁴ Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992, First Report and Order, 9 FCC Rcd 1981, 1982 (1994) ("Cable Compatibility Order").

⁵ Id.; see also Notice at ¶ 75 (observing that competition in the market for cable CPE will provide users with many benefits, including "the development of innovative types of CPE, improved performance of existing and new CPE, and improved maintenance of CPE.")

- Cable operators should be prohibited from bundling CPE with their services.
- Consumers should have the right to interconnect non-operator provided equipment to the cable operators' networks. In order to ensure that such interconnection does not reduce the safety or reliability of cable networks, the Commission should extend its Part 68 registration program to cable CPE.
- Cable operators should be required to disclose the technical interface specifications necessary to allow independent manufacturers to develop interoperable CPE.

I. THE CPE NO-BUNDLING RULE HAS BEEN AN UNQUALIFIED SUCCESS

IDCMA believes that the Commission's No-Bundling Rule should serve as the foundation for the pro-competitive framework for cable CPE adopted in this proceeding. By its terms, the rule requires common carriers to separate the provision of transmission service and CPE.⁶ As the Commission has recognized repeatedly, the No-Bundling Rule has yielded substantial benefits to consumers.

⁶ The rule does not prohibit carriers from providing CPE; it merely requires that they do so on an unbundled, detariffed basis. The rule states that "[e]xcept as otherwise ordered by the Commission . . . the carrier provision of customer-premises equipment used in conjunction with the interstate telecommunications network shall be separate and distinct from provision of common carrier communications services and not offered on a tariffed basis." 47 C.F.R. § 64.702(e) (1996)

In its Computer II decision, the Commission explained:

competition in the equipment market has stimulated innovation on the part of both independent suppliers and telephone companies, thereby affording the public a wider range of terminal choices at lower costs . . . Moreover this policy, has afforded consumers more options in obtaining equipment that best suits their communications or information processing needs. Benefits of this competitive policy have been found in such areas as improved maintenance and reliability, improved installation features including ease of making changes, competitive sources of supply, the option of leasing or owning equipment, and competitive pricing and payment options.⁷

Since Computer II, the Commission has had several opportunities to evaluate the effectiveness of the No-Bundling Rule and other pro-competitive CPE policies. And time and again the Commission has reaffirmed its commitment to the rule and to the substantial benefits generated by competition in the market for CPE.⁸

⁷ In Computer II, the Commission ordered the complete unbundling and detariffing of all carrier-provided CPE. See Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Final Decision, 77 F.C.C.2d 384, 439 (1980) (citation omitted) ("Computer II"), on recon., 84 F.C.C.2d 50 (1980) ("Computer II Reconsideration Order"), further recon., 88 F.C.C.2d 512 (1981), aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied 461 U.S. 938 (1983).

⁸ See, e.g. Verilink Corporation's Petition for Rulemaking to Amend the Commission's Part 68 Rules to Authorize Regulated Carriers to Provide Certain Line Build Out Functionality as Part of Regulated Network Equipment on Customer Premises, 10 FCC Rcd 8914, 8921 (1995) ("Verilink LBO Order"); NYNEX Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 127, 9 FCC Rcd 1608, 1608 (1994); BellSouth Telecomm. Digital Transmission Serv. F.C.C. Tariff No. 1, 7 FCC Rcd 5504 (1992); BellSouth's Petition for Declaratory Ruling, 6 FCC Rcd 3336, 3343 (1991); Competition in the Interexchange Marketplace, 6 FCC Rcd 5880 (1990); AT&T Comms. Revisions to Tariff F.C.C. Nos. 1 and 2, 4 FCC Rcd 4984 (1989); Pacific Bell's Request to Provide Asynchronous/X.25 Protocol Conversion for its Victoria Technology, 3 FCC Rcd 3082, 3085 (1988), vacated sub nom. Independent Data Comm. Mfrs. Ass'n v. FCC, No. 88-1523 (D.C. Cir. 1988)(per curiam).

In the NYNEX Enterprise Service proceeding, for example, the Commission reviewed a petition for a waiver of the No-Bundling Rule. In denying the petition, the Commission affirmed the ongoing need for the rule and other pro-competitive measures. In doing so, the Commission concluded that:

[t]he underlying rationale for the Commission's procompetitive CPE policies and rules remains as valid today as it was during the Computer II Decisions The resulting increased competition among manufacturers has driven improvements in equipment quality, lowered CPE prices, and improved the performance of users' data communications networks. These policies have also created new job opportunities in several related sectors of the economy.⁹

Even more recently, in the Verilink Line Build Out proceeding, the Commission again reiterated its continued support for the No-Bundling Rule.¹⁰ In rejecting Verilink's petition, which sought to erode the No-Bundling Rule by allowing CPE-based functionality to be incorporated into the network, the Commission again observed that the rule has driven improvements in the quality of data communications equipment, lowered CPE prices, improved the performance of users' data communications networks, and created jobs.¹¹

The Commission is not alone in recognizing the substantial benefits that have flowed to consumers from the competitive provision of CPE. To the contrary, regulators,¹²

⁹ NYNEX Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 127, 9 FCC Rcd 1608, 1608 (1994) (emphasis added).

¹⁰ See Verilink LBO Order, 10 FCC Rcd at 8921.

¹¹ See id. at 8921.

¹² In 1986, just six years after the adoption of the No-Bundling Rule, Mark Fowler, then Chairman of the Federal Communications Commission, observed that:

(continued...)

the National Telecommunications and Information Administration,¹³ Members of Congress,¹⁴ and industry analysts¹⁵ all have recognized that robust competition in the market for CPE is the best way to guarantee diversity, innovation, quality, and affordability. In addition, the wide

¹²(...continued)

The introduction of competition has provided consumers with a wider variety of CPE options and with less expensive alternatives than existed in the earlier monopoly market. Consumers can obtain . . . new CPE features A wide variety of new terminal equipment has also appeared The benefits for business users have also been substantial

Mark S. Fowler, *et al.*, "Back to the Future: A Model for Telecommunications," 38 Fed. Comm. L. J. 145, 159 (1986).

¹³ The National Telecommunications and Information Administration estimates that, in real terms, the price of CPE declined about 50 percent between 1977 and 1989. See National Telecommunications and Information Administration, The NTIA Infrastructure Report: Telecommunications in the Age of Information at 205 n.707 (1991) (specifically recommending that the "FCC maintain its rule that bars common carriers from bundling CPE with their tariffed service offerings"); NTIA Inquiry on Universal Service and Open Access Issues, 59 Fed. Reg. 48112, 48113-14 (1994) (noting that the competitive provision of CPE has provided consumers with greater choice, more useful equipment, and a decline in cost of 50 percent when measured in real terms).

¹⁴ In a hearing before the House Subcommittee on Telecommunications and Finance, Representative Edward Markey observed that "[u]nbundling [customer premises] equipment . . . [has] allowed for a flowering of manufacturing of telephone equipment for the home and the business. It separated product from service and fostered consumer choice and competition." Oversight Hearings on Interactive Video Systems: Hearing Before the Subcomm. on Telecommunications and Finance of the House Comm. on Commerce, 103d Cong., 2d Sess. (Feb. 1, 1994) (Statement of Representative Edward Markey).

¹⁵ "The rule of thumb in . . . [the CPE] markets is half the price -- or double the functionality -- every two to five years." P. Huber, M. Kellogg, & J. Thorne, The Geodesic Network II 1993 Report on Competition in the Telephone Industry, § 6.60 (1992). This improvement in productivity far exceeds that found in the market for transport services.

variety of competitive, feature-rich CPE that has resulted from the No-Bundling Rule has benefitted carriers by increasing network usage.

The No-Bundling Rule also has served U.S. trade policy. The U.S. Government has expended considerable effort to open foreign markets to U.S. manufacturers of telecommunications equipment. The Commission's long-standing commitment to competition in the CPE market and the unqualified success of the No-Bundling Rule has enhanced the U.S. Government's ability to seek concessions from our trading partners. At the same time, it has set a positive example for foreign regulatory authorities.

In recent years, the U.S. Government's efforts to open foreign markets to U.S.-manufactured telecommunications equipment have started paying dividends. For example, foreign regulatory authorities in some countries have adopted pro-competitive measures to prevent their monopoly telecommunications organizations ("TOs") from discriminating directly against independent equipment manufacturers.¹⁶ Due to the rigors of the domestic CPE markets, U.S. telecommunications equipment manufacturers have been well-positioned to take advantage of these export opportunities and to compete against their foreign counterparts. As a consequence, exports have increased and high-skilled jobs have been created for U.S. workers.

¹⁶ See Guidelines on the Application of EEC Competition Rules in the Telecommunications Sector, 91 Official Journal C 223/02, p. 237 ¶ 134 (Sep. 6, 1991).

II. THE COMMISSION SHOULD EXTEND THE NO-BUNDLING RULE TO CABLE CPE

Based on its experience in the CPE market, IDCMA is convinced that unbundling cable CPE will provide substantial benefits to cable subscribers. IDCMA therefore urges the Commission to take advantage of the opportunity presented by this proceeding to implement Section 304 of the Telecommunications Act of 1996, which requires the Commission to unbundle all cable CPE.¹⁷ Applying the No-Bundling Rule to cable CPE will:

- prevent cable operators from using their market power to force subscribers to purchase cable CPE as a condition of obtaining cable service;
- provide consumers with greater access to a wide variety of innovative cable CPE; and
- bolster U.S. trade policy.

Extending the unbundling rule to cable CPE also will be an important first step in the process of harmonizing the regulatory treatment of all CPE. Given the rapid convergence of cable and telephony, the need for such harmonization cannot be overstated.¹⁸

¹⁷ IDCMA believes that the cable operators' interest in preventing the theft of cable services can be addressed without bundling. IDCMA anticipates that consumers will be able to obtain digital set-top boxes with a standardized security interface. Consumers will then be able to load operator-provided software that contains information about the services that the subscriber is authorized to receive as well as the decryption information necessary to descramble cable programming. Until such a standard interface is developed, IDCMA does not object to the bundling of cable equipment that performs security functions, such as signal descrambling. IDCMA, however, urges the Commission to specify that such equipment can only be used to perform security functions.

¹⁸ As recognized in the Notice, "disparate regulatory schemes for cable-related CPE and (continued...)"

**A. The Telecommunications Act of 1996 Requires
the Unbundling of All Cable CPE**

Section 304 of the Telecommunications Act of 1996 (the "Act") requires the Commission to promote the competitive availability of cable CPE.¹⁹ Specifically, the Act requires the Commission to adopt regulations:

to assure the commercial availability . . . of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services provided over multichannel video programming systems Such regulations shall not prohibit any multichannel video programming distributor from also offering converter boxes, interactive communications equipment, and other equipment . . . if the . . . charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any . . . service.²⁰

The House Committee Report explains that "one purpose of this section is to help ensure that consumers are not forced to purchase or lease a specific proprietary converter box, interactive device or other equipment from the cable system or network operator."²¹

The plain language of Section 304 reveals that this unbundling requirement applies to all cable CPE. By its terms, this section applies to equipment interconnected to multichannel

¹⁸(...continued)

telephone-related equipment could cause confusion for service providers as well as subscribers and regulators." Notice at ¶ 69.

¹⁹ The Telecommunications Act of 1996 also specifically preserves the CPE No-Bundling Rule. See The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 § 304 (1996).

²⁰ Id. (emphasis added)

²¹ See H.R. Rep. No. 104-458, 104th Cong., 1st Sess. 181 (1996).

video programming systems ("MVPSs").²² This is true regardless of whether the equipment is used to access traditional multichannel video programming or other services, such as telecommunications and information services. Because a cable system is a type of MVPS, Section 304 requires the unbundling of all equipment connected to cable systems -- from cable modems used to access interactive data base services to handsets used to access local exchange telephone service provided over cable systems.

B. Unbundling Cable CPE Will Benefit Cable Subscribers

There is every reason to believe that applying the No-Bundling Rule to cable CPE will benefit cable subscribers in the same manner that the rule has benefitted CPE consumers. Cable operators plainly have the ability and incentive to engage in the same sort of anticompetitive activity that the Commission has sought to prevent in the telephone market. By all accounts, the market for cable services is not yet competitive and, as a result, cable operators still enjoy considerable market power.²³ For years, cable operators have leveraged this market power to force subscribers to buy or lease operator-provided cable equipment, such as set-top boxes.

²² See 47 U.S.C. § 522(12).

²³ In its recent report on the state of competition in the market for video programming, the Commission concluded that "markets for the distribution of video programming are not yet competitive" and that "cable television systems remain the primary distributors of multichannel video programming services and continue to enjoy market power in local markets" Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Second Annual Report, FCC 95-491, CS Docket No. 95-61, at ¶¶ 5, 194 (rel. Dec. 11, 1995).

Without Commission action, cable operators will adopt this same approach for other types of cable CPE, such as cable modems used in connection with high-speed Internet access service offered over cable facilities.²⁴ Indeed, cable operators such as Tele-Communications, Inc., Time Warner, and Comcast have recently ordered over 500,000 cable modems.²⁵ The bundling of these modems will not only prevent consumers from obtaining the equipment that best meets their communications needs, but also will impede the evolution of a competitive market for cable modems. Applying the No-Bundling Rule to cable CPE, however, will prevent this undesired result by giving consumers the freedom to choose their own CPE.

Unbundling cable CPE also will allow independent manufacturers to enter the important new market for cable CPE. As the Commission has observed, opening the market for cable-related CPE to independent equipment manufacturers, "will give product developers and manufacturers, as well as cable systems operators, the ability and incentive to introduce new products and to respond to consumer demand."²⁶ This, in turn, will provide consumers with "greater access to technology with new features and functions."²⁷

²⁴ See Mark Landler, Where on Line is Cable, N.Y. Times, Jan. 31, 1996, at D1; Elizabeth Corcoran, Jones Intercable's Internet Connection, Washington Post, Feb. 19, 1996, Business Section, at 16; Karen Fessler, Cable Modems to Outpace I.S.D.N., Bloomberg Business News Article, Feb. 14, 1996.

²⁵ See Mark Landler, Where on Line is Cable, N.Y. Times, Jan. 31, 1996, at D4. One analyst predicts that by the year 2000, there will be 7 million users of cable modems who generate over \$1 billion for the cable industry. See Karen Fessler, Cable Modems to Outpace I.S.D.N., Bloomberg Business News, Feb. 14, 1996.

²⁶ Cable Compatibility Order, 9 FCC Rcd at 1982.

²⁷ Id.

The participation of independent manufacturers in the cable CPE market also will promote "intermodal" competition between network-based and equipment-based solutions. For example, as two-way interactive cable services are introduced, consumers increasingly will demand the ability to determine what content is available over cable systems, and to access it easily. This demand can be satisfied by either network-based "gateway" services or competitively provided "navigational" equipment. Cable operators have no incentive to offer cable equipment that would reduce the demand for network-based services. Independent manufacturers, by contrast, have the incentive and the demonstrated ability to develop and bring to market innovative alternatives to network-based services. Consumers clearly will benefit from such intermodal competition.

In addition to promoting intermodal competition, unbundling cable CPE also will reduce the ability of cable operators to act anticompetitively. There is a very real risk that cable operators will use profits from their service offerings -- which are subject to little, if any, competition -- to cross-subsidize their cable CPE. Separating the provision of cable services and equipment, however, would limit the ability of cable operators to misallocate equipment-related expenses to their service offerings.²⁸ As a consequence, all equipment vendors will be able to compete on an equal basis for the CPE purchases of cable subscribers.

²⁸ See Computer II, 77 F.C.C.2d at 443.

C. Unbundling Cable CPE Will Advance U.S. Trade Policy

Finally, unbundling cable CPE will advance U.S. trade policy. By affirming its commitment to competition in the market for cable-related CPE, the Commission can bolster the U.S. Government's standing to seek further concessions from our trading partners, while setting a further pro-competitive example for foreign regulatory authorities. Fostering competition in the market for cable-related CPE also will endow U.S. manufacturers with the competitive tools needed to take full advantage of export opportunities for cable CPE.

III. THE COMMISSION SHOULD AFFIRM THAT CABLE SUBSCRIBERS HAVE A RIGHT TO NONDISCRIMINATORY INTERCONNECTION AND SHOULD EXTEND THE PART 68 REGISTRATION PROGRAM TO CABLE CPE

In order to benefit from the wide selection of innovative equipment available in a competitive market, cable subscribers must be allowed to connect cable CPE to cable networks on a nondiscriminatory basis. IDCMA therefore supports the Commission's tentative decision to affirm the right of users to connect competitively provided equipment to the cable operators' networks.²⁹ In order to facilitate the exercise of this right, the Commission should extend its Part 68 registration program to all cable CPE.³⁰

²⁹ See Notice at ¶ 71.

³⁰ See id. at ¶ 74.

As the Commission has recognized, common carriers have used their control over the network to discriminate against users and independent manufacturers.³¹ To prevent such conduct in the cable environment, the Commission should require cable operators to permit customers to connect customer-provided cable CPE in the same manner as operator-provided equipment. In particular, the Commission should specify that cable operators cannot discriminate against cable subscribers connecting customer-provided equipment by imposing extra charges on such subscribers, providing an inferior level of service in installation or maintenance to such subscribers, or requiring such subscribers to use operator-provided interface devices in order to interconnect.

In order to ensure that customer-provided equipment does not harm the cable operators' networks, the Commission should extend its Part 68 registration program to all cable CPE.³² By establishing registration requirements for the interconnection of cable CPE, the

³¹ For example, in the past, common carriers required customer-provided CPE to interconnect with the network through special "protective connecting arrangements." The Commission, however, found that:

tariff provisions requiring the use of carrier-supplied connecting arrangements impose an unnecessarily restrictive limitation on the customer's right to make reasonable use of the services and facilities furnished by the carriers. . . They constitute an unjust and unreasonable discrimination both among users (or classes of users) and among suppliers of terminal equipment.

Proposal for New or Revised Classes of Interstate and Foreign Message Toll Tel. Serv., Second Report and Order, 58 F.C.C.2d 736, 738 (1976) (emphasis added), aff'd sub nom. North Carolina Util. Comm'n v. FCC, 552 F.2d 1036 (4th Cir.), cert. denied 434 U.S. 874 (1977).

³² See Notice at ¶ 74.

Commission will allay any concerns held by cable operators that the interconnection of non-operator equipment will jeopardize the reliability or security of cable networks.

Adopting a "Part 68 for Cable" will foster the availability of competitively provided cable CPE. Independent CPE manufacturers cannot realistically be expected to devote critical resources to developing and manufacturing cable CPE unless there is a guarantee that such equipment can interconnect with the cable operators' networks. Extending Part 68 to premises-based equipment connected to cable services will establish an equipment registration program designed to prevent harm to cable networks resulting from the interconnection of registered equipment. This, in turn, will assure independent manufacturers that their equipment can interconnect to cable networks and lead to the development of new and innovative types of cable CPE. When coupled with the unbundling of cable CPE, the extension of Part 68 to cable CPE will set the stage for the same level of intense competition found in the flourishing market for CPE used in connection with the telephone network. In the end, this will provide consumers with greater choices, more innovation, higher quality, and lower prices.

IV. THE COMMISSION SHOULD REQUIRE CABLE OPERATORS TO DISCLOSE CABLE NETWORK INTERFACE SPECIFICATIONS

The Commission has long recognized that telecommunications common carriers have the "ability to design new network service or change network interface specifications to favor their own CPE or that of a preferred manufacturer."³³ In order to prevent such conduct, the Commission requires all carriers to disclose information about the physical and logical

³³ Furnishing of Customer Premises Equipment by the Bell Operating Companies, 2 FCC Rcd 143, 150 (1987).

interfaces of the network "to all interested parties on the same terms and conditions."³⁴ Such disclosure is intended to give independent CPE manufacturers an equal opportunity to develop competing products that can interoperate with the network.

IDCMA believes that the Commission should act to ensure that independent manufacturers have this same opportunity in the cable CPE market. At the present time, cable systems use a variety of transmission methods. Without network disclosure requirements, cable operators will be able to impede competition in the cable CPE market by not disclosing network information, or by giving preferred manufacturers preferential access to information. Requiring cable operators to disclose information about the physical and logical interfaces to their networks will foster the participation of independent manufacturers in the cable CPE market and, as a result, provide consumers with expanded choices.

As with telecommunications common carriers, the disclosure required of cable operators should be "sufficiently broad in scope and defined in detail to permit offerors of CPE . . . to design . . . equipment that will be completely interoperable with the basic network."³⁵ Moreover, such disclosure should provide independent manufacturers with sufficiently advanced access to network information to allow them to develop competitive products.

In setting the advance disclosure period for cable operators, IDCMA believes that the Commission should use the network disclosure rules applied to the Bell Operating Companies ("BOCs") as a benchmark. The BOCs generally are required to disclose network information twelve months before the introduction of a new or modified network service that affects the

³⁴ Computer II Reconsideration Order, 84 F.C.C.2d at 82-83.

³⁵ Computer and Business Equipment Mfrs. Ass'n, 93 F.C.C.2d 1226, 1238 (1983).

interoperability of CPE.³⁶ Like the BOCs, cable operators are subject to little competition and thus have the ability to impede competition in the market for CPE by not disclosing information about network interfaces. To prevent such conduct, the Commission should require cable operators to disclose information about network interfaces at least twelve months before introducing a new or modified network service that affects the interoperability of cable CPE. As for existing services, the Commission should require cable operators to make such disclosure within a reasonable period of time.

³⁶ In situations in which a BOC is able to introduce a new service in less than twelve months after the make/buy point, disclosure is required at the make/buy point. In no case, however, can a new or modified network service be introduced until six months after the network disclosure. See Furnishing of Customer Premises Equipment by the Bell Operating Companies, 2 FCC Rcd 143, 150 (1987).

CONCLUSION

In charting a competitive course for the cable CPE market, the Commission should be guided by the same basic principles that have worked so well in the market for CPE used in connection with carrier-provided services. As directed by Section 304 of the Telecommunications Act of 1996, the Commission should prohibit cable operators from bundling cable CPE with their service offerings. In addition, the Commission should affirm that cable subscribers have the right to interconnect competitively provided CPE to the cable operators' networks on a nondiscriminatory basis. In order to facilitate the exercise of this right, while preventing harm to cable networks, the Commission should extend Part 68 to cable. Finally, the Commission should require cable operators to disclose publicly information about network interfaces at least twelve months before introducing a new or modified network service.

Respectfully submitted,

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